

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2650 of 2005
With
CRIMINAL MISC.APPLICATION No. 261 of 2006
In CRIMINAL APPEAL No. 2650 of 2005
With
CRIMINAL APPEAL No. 2652 of 2005
With
CRIMINAL APPEAL No. 128 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

MAHESHBHAI INDRAJEET PRAJAPATI & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

=====

Appearance :

MR UTPAL M PANCHAL for Appellant in CR.A. NO.2650/005 and in CR.MA No.261/06.
MR SM CHUDASMA for the appellants in CR.A. No.2652/05
MR IZAZ QURESHI for MR SHAKEELL QURESHI IN CR.A No.128/06
MR PD BHATE, APP Opponent(s) in all matters.

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/12/2007

ORAL JUDGMENT

These appeals arise out of a common judgment and order dated 23rd September 2005 passed by the learned Presiding Officer, 10th Fast Track Court, Surat in Sessions Case No.94/04.

2. The accused were facing charge under section 399 and 402 of the Indian Penal Code as well as under the provisions of the Bombay Police Act. Learned Sessions Judge convicted the appellants under section 399 of the Indian Penal Code and sentenced to rigorous imprisonment for a period of five years and imposed fine of Rs.1,000/- each. They were also convicted under section 135 of the Bombay Police Act and sentenced to rigorous imprisonment for three months. Substantive sentence, however, was ordered to run concurrently. It is this judgment and order which is under challenge in these appeals.

3. At the outset, learned advocates appearing for the appellants submitted that against the sentence of five years, they have already undergone virtually the entire sentence including the remission. They submitted that, therefore, instead of going into the question of legality of the conviction, the Court may consider reducing the sentence to the one already undergone. It was submitted that this is the only conviction against the appellants and the appellants have not been

convicted in the past for similar offence nor any other case is pending against them involving in any criminal offence. Learned advocate Shri Izaz Qureshi appearing for the appellant in Criminal Appeal No.128 of 2006 submitted that the appellant therein though was involved in a criminal case in past has been acquitted thereof.

4. I have also heard learned APP Shri Bhate for the State.

5. From the record submitted by the State, it would appear that against the sentence of five years, the appellants are in Jail right from 13th June 2004 i.e. the date of occurrence of the incident. During the pendency of trial as well as appeals, they have not been granted bail. They have, therefore, virtually served out the entire sentence, including remission. In fact, the jail report suggests that their proposed date of release was some time in November 2007. Counsel for the appellants, however, submitted that the appellants are not yet released. Be that as it may. It is indisputable that the appellants have served out virtually the entire sentence including the period of remission. Therefore, even if a few months of sentence are yet to be served out, this would be a fit case where the penalty should be reduced to one already undergone by the appellants.

6. As noted earlier, this is the only case in

which the appellants are involved and they do not have a history of previous conviction in criminal cases. They were found in possession of weapons under suspicious circumstances. Carrying on fire arm was, however, not believed by the Trial Court. They were convicted under section 399 of the Indian Penal Code for preparation of committing dacoity. They were sentenced to undergo RI for a period of 5 years and directed to pay fine. They have already paid up the fine as stated by the counsel.

7. In the facts of the case, therefore, the sentence of appellants is reduced to one already undergone. They shall be released forthwith, if not required in any other criminal case.

8. With these directions, the appeals stand disposed.

9. In view of the order passed in the main appeal, the Criminal Misc. Application for bail is disposed of as having become infructuous.

(Akil Kureshi, J.)

(vjn)